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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/830,121
Filing Date: April 23, 2004
Appellant(s): HABATJOU, JACQUES

William P. Berridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/19/2009 appealing from the Office action mailed 8/19/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1, 3-7, 9-17, 20-22, 25-34, 36-38 and 40-46.

Claims 1 and 21 have been amended subsequent to the final rejection.

Claims 8, 18, 19, 35 and 39 are withdrawn from consideration as not directed to the elected invention.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,603,612	Krautzberger	9-1925
4,272,768	Rookard, Jr.	6-1981
4,306,685	Coffee	12-1981
* DE 35 17 122	Schillig	4-1985
US 2003/0108487	Bara	6-2003

* A translation of the Schillig reference is located in the file.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-7, 9-17, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (DE 3517122) in view of Rookard, Jr. (4,272,768).

Schilling shows a spray gun comprising: a spray mechanism (1), and a reservoir (3) containing a substance for spraying, the reservoir is arranged to be removably mounted to the device, the reservoir comprising; a substance outlet passage (where the fluid exits the container into the gun, or the top of the container 19), a closure member (6) to close the passage when the reservoir is not mounted on the device. The closure member opens in response to the reservoir being mounted on the device (4), wherein the substance comprises a cosmetic or a care product (the examiner is interoperating paint to be both a cosmetic and a care product). Schilling does not specifically disclose that the reservoir comprises a first partition, first and second compartments capable of containing the substance, the compartments being arranged to feed the spray mechanism with the substance and being disposed on either side of the first partition, and the substance outlet passage opening out at one end thereof on either side of the first partition.

However, Rookard, Jr. shows a reservoir comprising a first second and third partitions (6), the first partition defining first and second compartments (the right and left compartments shown in figure 1), the compartments being arranged to feed the spray mechanism with the substance and being disposed on either side of the first partition, and the substance outlet passage (4) opening out at one end thereof on either side of the first partition.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to add the partitions of Rookard, Jr.'s reservoir to the reservoir of Schilling, and have the substance outlet passage of Schilling open out at

one end thereof on either side of the first partition. This modification would prevent uncontrollable sloshing which results in a stable reservoir even when partially full as taught by Rookard, Jr. (column 2, lines 39-41).

Regarding claims 5 and 6, the partitions of Rookard, Jr. that are being added to Schilling's reservoir include a second partition (on the right side of figure 1) on one side of the first partition that defines two sub-compartments (top and bottom) that are in communication with each other, a third partition (on the left side of figure 1) located on the other side of the first partition defining two sub-compartments (top and bottom), the first partition being between the second and third partitions (figure 1).

Regarding claim 7, the reservoir of Schilling includes a base portion (30) and a lid-forming portion (19) fitted on the base portion (figure 1).

Regarding claims 9-11, the substance outlet passage (where the fluid exits the container into the gun, or the top of the container 19) is defined at least by an end piece (7) which projects from the reservoir (figure 1), the end piece including a sealing O-ring (12).

Regarding claim 12, Schilling as modified by Rookard, Jr. shows all aspects of the appellant's invention as in the rejection of claim 1 above, but does not specifically disclose that the reservoir is partially transparent.

However, transparent reservoirs are common in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to make a portion of the reservoir transparent in order to see how much substance is left in the reservoir.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to make the reservoir out of a transparent material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice.

Regarding claim 13, the device of Shilling includes a fastener (5) arraigned to co-operate by complementary shapes with the spray mechanism (1).

Regarding claim 14, the substance is sprayed in response to a suction created by a vector gas (inherently part of the spray gun in figure 1).

Regarding claim 16, the spray mechanism includes a control member to control the vector gas and the substance to be sprayed (figure 1).

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (DE 3517122) in view of Rookard, Jr. (4,272,768) further in view of Coffee (4,306,685).

Schilling as modified by Rookard, Jr. shows all aspects of the appellant's invention as in the rejection of claim 1 above, but does not specifically disclose that the check valve is a ball check valve.

However, Coffee shows a ball check valve member (42) for a pressurized container.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to substitute the ball check valve member (42) of Coffee

for the check valve member (6) of Schilling as modified by Rookard, Jr. in order to create a more uniform seal when the valve is closed, preventing liquid from leaving the container, as taught by Coffee (column 7, lines 33- 34).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (DE 3517122), in view of Krautzberger (1,603,612).

Schilling shows a spray device comprising a spray mechanism (1) including a housing and a reservoir (3) containing a substance to be sprayed capable of being releasably mounted to the device so that the substance can be selectively dispensed from the spray mechanism, the reservoir comprising a closure member (6) to close the passage when the reservoir is not mounted on the device, wherein, the closure member opens in response to the reservoir being mounted on the device (4), but does not specifically disclose that the housing has a vector gas supply.

However, Krautzberger shows a paint spray gun that includes a reservoir and housing for receiving a vector gas supply. The vector gas supply enters the device through element 6b and is used to propel the substance being sprayed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to connect a vector gas supply to the housing of the device of Schilling, in order to propel the substance to be sprayed from the reservoir to the article to be sprayed, as taught by Krautzberger.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krautzberger (1,603,612), in view of Schilling (DE 3517122).

Krautzberger shows a spray device comprising a spray mechanism (8) including a housing for receiving a vector gas supply (6b) and a reservoir (3) containing a substance to be sprayed capable of being releasably mounted to the device so that the substance can be selectively dispensed from the spray mechanism, but does not specifically disclose that the reservoir comprises a closure member to close the passage when the reservoir is not mounted on the device, wherein, the closure member opens in response to the reservoir being mounted on the device.

However, Schilling shows a spray device with a reservoir that includes a closure member (6) to close the passage when the reservoir is not mounted on the device, wherein, the closure member opens in response to the reservoir being mounted on the device (4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention add the closure member (6) of the reservoir of Schilling, to the reservoir of Krautzberger, in order to have the reservoir automatically seal when it is removed from the device to prevent leakage of the substance being sprayed, as taught by Schilling.

Claims 21, 22, 25-34, 36-38, 40-42 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krautzberger (1,603,612), in view of Bara (US 2003/0108487)

Krautzberger shows a spray device for spraying at least one substance contained in a reservoir (3), the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas coming from inlet 6b (lines 20-25), the device comprising an adjustment valve (5) for adjusting a flow rate of the sprayed substance and a control member (15) capable of being operated by a user to act both on a vector gas dispenser valve (20) and the adjustment valve (5), the adjustment valve comprising a plunger (5) arranged to co-operate with an associated seat (figure 1) so that the flow rate of the sprayed substance varies with the spacing between the seat and the plunger, the dispenser valve is secured to the pressurized receptacle and is triggered by tilting a control rod (see marked up figure below), and the substance comprising a cosmetic or a care product (paint is both a cosmetic and a care product), but does not specifically disclose that the vector gas is stored in a pressurized receptacle.

However, Bara shows a device for spraying a product that includes a supply of vector gas that is contained in a receptacle (101), and used to draw a fluid from a second container by creating a vacuum just as in the device of Krautzberger.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to use the pressurized receptacle (101) of Bara's invention to carry the vector gas (or compressed air) of the device of Krautzberger, and have it be connected to the device at the air inlet 6b. This modification would allow the spray device to be portable, and self contained (i.e. no outside air source) as taught by Bara (paragraph 0001).

Regarding claim 22, the control member is a pivoting lever (see marked up figure below).

Regarding claims 25-27, the seat is situated on a support piece (8) for supporting the nozzle, and the support piece is releasably fastened to the device (figure 1).

Regarding claim 26, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to make the support piece out of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice.

Regarding claims 28 and 33, the reservoir is removable (figure 1) and the plunger is slidable in a direction parallel to the direction along which the substance is sprayed (figure 1).

Regarding claims 29-32, the device of Krautzberger, as modified by Bara above, shows all aspects of the appellant's invention as in the rejection of claim 21 above, but does not specifically disclose that the device comprises two outlet nozzles for the vector gas and an outlet for the substance, with the two vector gas outlet nozzles converging in a direction going away from the device and the substance outlet orifice comprises an axis substantially in a same plane as the vector gas outlet nozzles.

However, Bara shows a spraying device comprising two outlet nozzles for the vector gas (7) and an outlet for the substance (6), with the two vector gas outlet nozzles converging in a direction going away from the device and the substance outlet orifice comprises an axis substantially in a same plane as the vector gas outlet nozzles (figures 1-4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to substitute the two vector gas nozzles (7) and the substance outlet (6) of Bara's spraying device for the nozzle configuration of the device of Krautzberger, as modified by Bara above, in order to suck the substance into the flow of the vector gas more efficiently due to having two nozzles of vector gas orientated towards each other, as well as to atomize the substance being sprayed, as taught by Bara.

Regarding claim 30, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to make the at least one nozzle out of metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice.

Regarding claim 34, the device includes a housing (6b) for receiving the pressurized container as shown in figure 1.

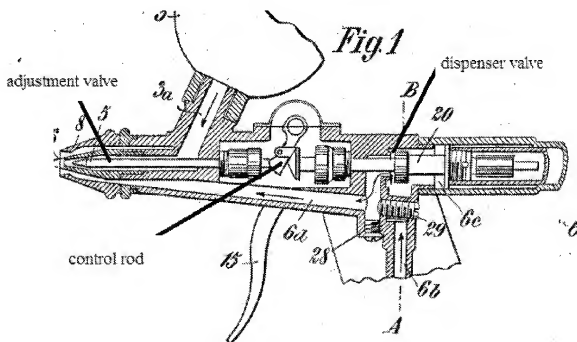
Regarding claims 36 and 37, the device does not include a return spring for the plunger. However, it is well known in the art to use a return spring to return a valve needle back to a valve seat. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to add a return spring to the device in order to return the plunger back to its seat automatically.

Regarding claim 38, the device includes an end piece, (the linkage in the handle of the device in figure 1) arranged to be engaged on a control rod of the dispenser

valve, wherein the control member is arranged to be capable of pressing against the end piece.

Regarding claims 40 and 41, the device is generally elongate in shape and the control member comprises a presser face on a longitude side of the device and the pressurized container and the reservoir are held together in a fixed manner (via the device housing), or the users hands

Regarding claim 42, the device of Krautzberger, as modified by Bara above includes a micro-orifice opening to the ambient air (figure 1). The opening is where the substance to be sprayed exits the reservoir to ambient.



EXAMINER'S MARKED UP FIGURE

(10) Response to Argument

A.

Regarding the appellant's remarks concerning the 103 obvious type rejection of Schillig in view of Rookard, the appellant argues that the examiner has not established that it would have been obvious to one of ordinary skill in the art to combine the references. However, the examiner respectfully disagrees.

Regarding the appellant's first argument, it is noted that the baffles of Rookard are to be positioned in the reservoir of Schillig, just as they are positioned in the in the reservoir of Rookard, in the center of the reservoir, with the outlet passage opening up on either side of the first partition. The appellant argues that element 17 would then interfere with the first partition. However, if this is to be the case, it certainly would be obvious to one of ordinary skill in the art to locate the partition above, or make a cut out for, element 17 to prevent the interference. It is the examiner's position that the baffles will not interfere with the valve mechanism (6) because element 17 surrounds and protects the valve mechanism. In addition, the opening at the top of the reservoir (3) could also be considered the outlet opening.

Regarding the appellant's second argument, it is noted that the examiner is considering the reservoir of Rookard to be analogous art with respect to the reservoir of Schillig as well as the reservoir of the present invention. In response to appellant's argument that the reservoir of Rookard is nonanalogous art, it has been held that a prior art reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the appellant was concerned,

in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, first of all, all the above reservoirs contain a fluid to be dispensed and therefore are all in the same field of endeavor. Secondly, fluid present in any reservoir will inherently slosh around, and therefore, the fluid in the reservoir of Schillig would slosh around until the baffles of Rookard are placed inside the reservoir. Adding the baffles of Rookard solves a known problem of sloshing of fluids in reservoirs, as pointed out in the Rookard reference.

Lastly, The appellant argues the examiner's interpretation of the term "cosmetic or care product." The American Heritage Dictionary defines cosmetic as: Something superficial that is used to cover a deficiency or defect. The examiner is considering the paint from the device of Schilling and Krautzberger to be a cosmetic due to the fact that paint is used to cover a deficiency or defect. Additionally, paint can be used to protect and care for certain elements, and therefore it can be considered a care product as well. Additionally, because the appellant is claiming a device, the actual material that is intended to be used with the device is given little or no patentable weight. The material being contained in the reservoir or being sprayed from the device does not constitute a structural difference between the prior art and the appellant's invention.

B.

Regarding the appellant's remarks concerning the 103 obvious type rejection of Schillig in view of Rookard, and further in view of Coffee, the appellant argues that the modification would improperly change the principle of operation of the spray device of Schillig. The appellant argues that the fluid flows through the spiked tube of Schillig and

that in the Coffee reference, the fluid does not flow through a spiked tub. The examiner is not proposing that the entire valve device be substituted, but merely just the disk valve member (6) of Schillig for the ball valve member (42) of Coffee. The spiked tube (4) of Schillig would still be present in the combination and would be used to unseat the ball valve member of Coffee, instead of finger 47. In the proposed combination, the fluid will still flow from the reservoir through the spiked tube to the spray gun.

C and D.

Regarding the appellant's remarks concerning the 103 obvious type rejection of Schillig in view of Krautzberger, or Krautzberger in view of Schillig, the appellant argues that neither combination includes a housing for receiving a vector gas supply. It is the examiner's position that the claim limitation: "a housing for receiving a vector gas supply," is a functional recitation and only requires the device to be capable of receiving a vector gas supply. In other words, the claim is not positively reciting a vector gas supply, just that the device is capable of being connected to one. In this case, the device of Krautzberger is fully capable of receiving a vector gas supply through tube 6b. Secondly, the appellant argues that the limitation requires that the vector gas supply be located completely inside the housing. Again, the examiner respectfully disagrees. The claim language states "a housing for receiving a vector gas supply," and it is noted that the device of Krautzberger receives its vector gas supply via tube 6b (line 30). The compressed air is being considered the vector gas supply and when the compressed air is inside the housing of the gun, the gun has received the compressed air. Therefore, when the compressed air enters the housing, the housing has received the vector gas

supply. Nowhere does the claim state that the vector gas supply must be inside the housing. The gun is connected to a vector gas supply and therefore it receives the vector gas supply.

E.

Regarding the appellant's remarks concerning the 103 obvious type rejection of Krautzberger in view of Bara, the appellant argues that the dispenser valve is not secured to the pressurized receptacle and is not triggered by the tilting control rod. The 103 rejection uses the Krautzberger reference as the base reference and adds the pressurized receptacle of Bara to the vector gas input 6b of Krautzberger. It is the examiners position that because the dispenser valve (20) of Krautzberger is part of the gun, and the gun is secured to the pressurized receptacle, then therefore the dispenser valve is also secured to the pressurized receptacle. The appellant does specifically claim that the dispenser valve is directly connected to the pressurized receptacle. Additionally, the examiner is considering the tilting control rod shown in the figure above to trigger the dispenser valve 20. With that said, the dispenser valve is secured to the pressurized receptacle and is triggered by the tilting control rod in the device of Krautzberger in view of Bara.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/J. J. B./
Examiner, Art Unit 3752
7/22/209

Conferees:

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752

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